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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 254

WAYNE F. WOODRUFF,

Petitioner,

vs.

R. P. BALKCOM, JR., WARDEN

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF AND AUTHORITIES IN BEHALF OF RESPONDENT

EUGENE COOK,
Attorney General of Georgia
Counsel for Respondent.

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Statement of Facts

The petitioner was duly tried for the offense of murder in the Superior Court of Charlton County, Georgia, found guilty of the offense charged without a recommendation and was sentenced to death by electrocution as provided for by law. He, within the time prescribed by law made his motion for a new trial and when this motion was denied, he appealed from that decision to the Supreme Court of Georgia and that Court affirmed the judgment of the trial

Court (see 204 Georgia, page 17). In his trial, he used an attorney of his own selection, availing himself of his constitutional right to have legal representation of his own choice and this same attorney made his appeal to the Supreme Court of Georgia. After his appeal was denied by the highest court in the State, he then employed other attorneys and these new attorneys filed a writ of habeas corpus in the Superior Court of Tattnall County where petitioner was then confined awaiting electrocution, in which he contended that the attorney of his own choice had not properly represented him in the trial of said case, this being the first complaint along that line. When this writ came up for a hearing before the Superior Court of Tattnall County, the same was dismissed by the Court and no appeal has ever been taken by petitioner from that order of dismissal. Soon after the dismissal of this first writ of habeas corpus which had been sanctioned by the presiding judge, the petitioner presented to the same judge another petition covering some additional grounds to those in his first petition for this writ. The presiding judge recognizing the laws of Georgia to the effect that no one can file more than one writ of habeas corpus seeking release from confinement under the same charges, refused to entertain and sanction this writ, and to this refusal of the presiding judge, the petitioner appealed to the Supreme Court of Georgia which Court affirmed the judgment of refusal to entertain by the presiding judge in the lower court.

In this way, the defendant was tried for murder in a court of competent jurisdiction and his conviction was affirmed by the reviewing court of this State. He tested the legality of his trial on his appeal by an attorney of his own selection and then by the writ of habeas corpus, he again sought to test the legality of his conviction by some other attorneys who now claim that because the petitioner was

poorly and unwisely represented by the attorney whom he selected, that his conviction should now be set aside.

Brief and Authorities

It is a novel idea indeed that anyone in any kind of case can avail himself of his right and privilege to employ and use an attorney of his own selection, after he has lost his case and his appeal from the judgment rendered, to now for the first time by new attorneys ask that his conviction be set aside because the efforts of his first attorney, uncomplained of until after the trial and appeal has been completed are not successful.

In other words, he now contends that he did not enjoy his constitutional rights to have legal representation. If his contentions were sound, after the termination of the present litigation he could again employ new attorneys and contend that those now representing him did not properly handle his case, and this could go on indefinitely.

Practically this whole appeal is an effort to convince this Court that petitioner would have done better in his trial if his attorney had put up some named witnesses and therefore surrendered his right to have the closing argument.

The record of the appeal in this case as reported in 204th Georgia Reports, page 17 clearly shows that the attorney who represented the defendant in his trial and appeal fully understood his duties. Despite the plain provisions of the laws of Georgia to the effect that no one has a right to file more than one application for the writ of habeas corpus seeking relief from one confinement, the defendant persists in trying to make his second application for this writ stick, though he does not at all claim that the grounds set forth in his second application for this writ were not known to him when he filed the first one.

> "Judgment on habeas corpus being in this State subject to review, especially where the imprisonment

is on civil process, is final until reversed; and where the legality of the same cause of imprisonment is twice drawn in question between the same parties by successive writs of habeas corpus before the same court, or before different courts of competent original jurisdiction, the judgment on the former writ may be answered in bar of a discharge under the latter. The matter will be deemed res adjudicata as to all points which were necessarily involved in the general question of the legality or illegality of the arrest and detention, whether all of them were actually presented or not. It is sufficient if they might have been and ought to have been presented in the exercise of due diligence. Perry et al. vs. McLendon, Sheriff, 62nd Ga., Page 598, (1)."

"In this state the common-law rule that the doctrine of res judicata does not extend to the trial of habeas corpus proceedings is not of force, and such proceedings are subject to the provisions of the Code No. 110-501. Andrews vs. Aderhold, Warden, 201 Ga., Page 132, (2)."

To the refusal by the Judge of the Superior Court of Tattnall County to entertain a second writ of habeas corpus, the applicant appealed to the Supreme Court of Georgia and that Court on May 10th, 1949 (S. E. Reporter, Vol. 53, page 680) affirmed the judgment of the presiding judge and we quote from that decision.

"An applicant for the writ of habeas corpus may not, without excuse, withhold allegations from his petition and thereafter use them on a second attempt, if the first should fail. Wong Doo vs. United States, 265 U. S. 239, 44 S. Ct. 524, 68 L. Ed. 999. To reserve such allegations for use in a later writ, is to make an abusive use of habeas corpus. Swihart vs. Johnston, 9 Cir., 150 F. 2d 721; Andrews vs. Aderhold, 201 Ga. 132 (4), 39 S. E. 2d 61; Leathers vs. Leathers, 138 Ga. 740, 76 S. E. 44; Frank vs. State, 142 Ga. 741 (2), 83 S. E. 645, L.R.A. 1915 D, 817."

"A trial judge, to whom a petition for habeas corpus is presented, may take judicial notice of the record in

the case and of what has taken place in his presence, and when it plainly appears therefrom that there is no legal ground for the writ, by the express provisions of the Code, 50-104, 50-105, he may decline to grant the same. Jones vs. Hill, 17 Ga. App. 151, 87 S.E. 755; Andrews vs. Aderhold, 201 Ga. 132, 140, 39 S.E. 2d 61; Auld vs. Cobb Exchange Bank, 204 Ga. 729, 732, 51 S.E. 2d 635."

"While the second petition for the writ of habeas corpus in this case is based upon grounds different from those in the first, from their very nature they were known to the applicant and to his present attorneys at the time of the filing of the first petition. The present application alleges no reason or excuse for the failure to include these grounds in the first. The trial court properly refused to sanction the petition."

Conclusion

We are unable to see, in view of what has been said above and of the authorities quoted, that the applicant can seriously contend that he has been denied his constitutional rights and we respectfully submit that the writ of certiorari should not be granted and that the application therefore should be dismissed as insufficient at law to show any right of the applicant thereof.

Respectfully submitted,

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